

6 March 1978

NOTE FOR: Associate Deputy Director for Administration

STATINTL

FROM: [Redacted]  
Deputy General Counsel

SUBJECT: Proposed Construction of Physical Conditioning and  
Recreational Facilities

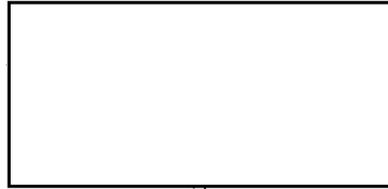
Mike:

I am returning the attached memorandum to the Director on the proposed construction of physical conditioning and recreational facilities in accordance with my telephone conversation with you on Friday.

I believe the proposed memorandum is premature and misleading. In particular, the attachment of [Redacted] memorandum to Jim McDonald is objectionable. You refer to this in the memorandum to the Director as a legal opinion of the General Counsel. It is not. It is simply a quick response by Bob to questions put to him orally by Jim. Perhaps it should not have been in the form of a memorandum, but that is beside the point. As you noted in our conversation Friday, [Redacted] of this Office is studying the law in regard to the use of CEAF funds and I believe you saw a draft of the memorandum he is preparing for [Redacted]. Additional information which Jim dug up Friday could change the thrust of the draft which you saw.

I also observed that someone has appended a marginal note on Bob [Redacted] memorandum contradicting an answer he gave Jim in paragraph 1.a. I am not sure whether the marginal note means that GSA has said they will accept money from EAA or money from us which EAA has given to us, but in any event the statement that Bob's answer is "not so" is wrong. If GSA will accept money from EAA because they have the statutory authority to do so, it does not contradict Bob's statement that the Agency has no authority to accept money from EAA. On the other hand, if the marginal note means that GSA is willint to take EAA money from the Agency after EAA contributes it to the Agency, I think we have a problem we will have to look into very carefully.

We have never been asked for a legal opinion on the use of various kinds of funds to construct these facilities. Tony advises that his understanding was that you would send forward your proposals as to how the facilities would be constructed and paid for and we would then concur or indicate any legal problems inherent in your proposals. Such proposals have not come through us either.



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Approved For Release 2003/06/13 : CIA-RDP81-00142R000500030004-3

3 MAR 1978

MEMORANDUM FOR: Director of Central Intelligence

VIA: Deputy Director of Central Intelligence

FROM: John F. Blake  
Deputy Director for Administration

SUBJECT: Proposed Construction of Physical Conditioning and  
Recreational Facilities

REFERENCE: Memo for Director of Logistics from [REDACTED]  
Associate General Counsel, dated 24 February 1978, Sub-  
ject: CIA Physical Conditioning & Recreational Facilities

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1. As you know, we have been examining various ways in which we may be able to fund and construct additional physical conditioning facilities, including tennis courts, here on the Langley compound. You will recall we proposed to construct these facilities in three phases. Phase I would have us to put a controlled access gate in the existing fence enclosing the area concerned, with a graded road and parking lot, and at a cost of about \$15,000. The cost of Phase I was going to be paid for with appropriated funds. Phase II, estimated at \$50,000, would include a baseball field, football field, basketball court and, possibly, handball court. The money for Phase II would be contributed by the Employees Activity Association, following a vote by the EAA board that the money would be spent expressly for these purposes. Phase III, estimated at \$50,000, was to include tennis courts, and we expected to use club funds to cover these expenses. Club funds are identified by the regulations as non-appropriated and have been derived, over the years, by and large, from the profits earned at some of the clubs the Agency maintains overseas and in the United States.

2. We do not anticipate any problems in funding Phases I and II of the project, but we have just recently been advised by the General Counsel's office that we cannot use the club funds for Phase III. The legal opinion is attached. At this particular time, therefore, it would appear that the only recourse available to us would be to use appropriated funds, but, here again, the General Counsel's office has indicated that it would be unwise of us not to receive specific Congressional authorization for this type of an expenditure. I will explore this latter possibility further with the Comptroller and keep you advised.

John F. Blake

Attachment

OGC 78-1137

DD/A REGISTRY  
18-0170/5

MEMORANDUM FOR: Director of Logistics

STATINTL

FROM :   
Associate General Counsel

SUBJECT : CIA Physical Conditioning and Recreational Facilities

Jim:

1. With regard to the proposal to construct physical conditioning and recreational facilities within the Headquarters compound, you posed the following questions:

a. May the Agency accept a monetary gift from EAA and use it in contracting for the construction of the Phase II facilities ( a football/ soccer field, a softball field, a handball court and a basketball court)?

ANSWER: No. The reason for this negative is that numerous Comptroller General decisions have held that absent express legislative authority a government agency may not accept a gift from a private source. EAA is a private entity incorporated under the laws of Virginia. Further, since the Agency does not now have an appropriation to fund such an undertaking we would be in contravention of the statutory prohibition against creating obligations in excess of or in advance of appropriations (31 U.S.C.A. 665). See also 41 U.S.C.A. 11 and 41 U.S.C.A 12.

*NOT SO -  
INASMUCH AS  
GSA HAS  
SAID THEY  
WILL ACCEPT  
THE MONEY  
&  
CONSTRUCT  
IN OUR BEHALF* →

b. May the Agency permit EAA to contract for the construction of the Phase II facilities using EAA funds?

ANSWER: No. The prohibition against the receipt of gifts would apply here, notwithstanding that the gift would take the form of a baseball field. Further, since we cannot presume that EAA would fund the facility's maintenance expenses in perpetuity, we could be accused of creating a charge against an anticipated appropriation.

c. May EAA make a monetary gift to the CEAF and may the Agency use the CEAF, as augmented by the EAA gift, to fund the construction of the Phase II facilities?

ANSWER: No. According to [redacted]

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A Central Employees Activities Fund has been established from excess profits of existing self-sustaining personnel services or recreational activities and net proceeds from the termination and liquidation of the assets of such activities.

Even to concede that the funds in the CEAF may not be appropriated funds is not to characterize them as being nonappropriated funds as that term may be used when discussing funds generated by the nonappropriated fund activities which support the military. But noting that these funds have been generated by "personnel service and recreational activities... established and operated by the Agency..." [redacted], and that their use is "[s]ubject to the approval of the Deputy Director for Administration ...for the general benefit and morale of Agency personnel, such as recreational activities, establishment of new self-sustaining activities, or providing financial relief to existing self-sustaining activities" [redacted], it seems quite apparent that those funds are at least Government funds and further that they are in essence trust funds, being held in an Agency account. EAA's gift to the CEAF would be tantamount to a gift to the Agency. [redacted] does not contemplate that the CEAF is to be augmented by donations from private sources. Further, noting such references in [redacted] as "field installations," "chiefs of field installations" and "factors peculiar to the mission of the Agency [such as] isolated location of the installation," it could be argued that using the CEAF to construct recreational facilities for Headquarters personnel would breach the trust with which these funds are impressed.

d. May CEAF monies be used by the Agency to underwrite a liability of EAA that might exceed the amount of its gift?

ANSWER: No. The considerations mentioned in subparagraph c above would suggest that this would be a donation to an ineligible party for an ineligible purpose.

f. May the Agency use CEAF funds in contracting for the construction of the Phase III facilities (tennis courts)?

ANSWER: No. See the discussion in subparagraph c.

g. May the Agency accept from the EAA the \$20,000 it has spent to renovate the Headquarters space occupied by the EAA store?

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ANSWER: Yes. But since the renovation costs were charged to appropriated funds, the reimbursement should be returned to miscellaneous receipts.

2. Sorry about being so negative.



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**ROUTING AND RECORD SHEET**

SUBJECT: (Optional) Proposed Construction of Physical Conditioning and Recreational Facilities

FROM: John F. Blake  
Deputy Director for Administration

EXTENSION NO. DDA 78-0170/6  
DATE

TO: (Officer designation, room number, and building)

DATE  
RECEIVED      FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. General Counsel

3-3-78

Returned to DDA - see note to Mr. Malanick attached.

2. EO / DDA  
A/DDA

3/6

*[Handwritten signature]*

3. ~~DDCI~~

4.

5. ~~DCI~~

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